

## REMARKS

Careful consideration has been given to the Official Action of March 12, 2003 and reconsideration of the application as amended is respectfully requested.

The indicated allowance of claims 1-2, 6-11 and 14-37 is noted and is appreciated.

Claims 3-5 remain rejected under 35 U.S.C. § 102 on Kittelsen. Amendatory action has been taken in these claims in order to clearly define over Kittelsen and be placed into condition for allowance along with all of the remaining claims.

Claim 3 is directed to the thickened portion of the mouthguard as shown in Figure 2 and identified by reference numeral 23. As argued previously, it is believed claim 3 is distinguished as the projections 92 of Kittelsen do not provide this thickening. In this regard, we wish to thank the Examiner for his comment regarding the thickened shield. It is believed that the amendment to claim 3 now removes the projections 92 from consideration. Claim 3 now requires the thickening to extend across the entire length of the front portion of the mouthguard. This portion of the mouthguard can only provide a labial shield if it is thickened across the entire front. This is in contrast to Kittelsen in which

the front portion is castellated. As it is castellated it cannot act as a labial shield. That is, it is not thickened across the entire front length as required by claim 3. The castellations only provide intermittent thickening.

Claim 4 covers the ridge 22 as best seen in Figure 2, which ridge 22 acts as a shield, as previously argued.

The Examiner rejected claim 4 as the claim did not specifically define a ridge. However, claim 4 has now been amended so that the shield is defined as a ridge extending adjacent to the outer flange of each arm.

In rejecting claim 5 as anticipated by Kittelsen, the Examiner refers to what is considered to be a raised portion 66 shown in Figure 5. In respect of the item 66 attention is drawn to column 4 line 23 where the item 66 is described as a "bottom side 66". The bottom side 66 is actually the lower surface of the base 62. In that regard, see column 4, line 23. Accordingly, the item 66 is a lower surface. However, the base 62 has a top surface (top side) 64.

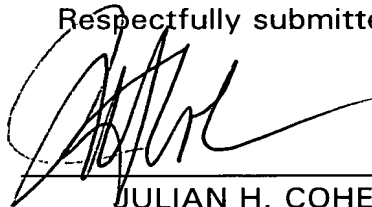
Claim 5 is directed to the upper surface of the base. This corresponds to the upper surface (top side) 64 of Kittelsen. However, the top side 64 of Kittelsen fails to have a raised forward portion as previously argued. In the present specification this raised portion is identified by the reference numeral 26

and is best seen in Figure 4. As the upper surface 64 of Kittelsen fails to have this raised portion, clearly Kittelsen is not an anticipation.

Although claim 5 as previously presented referred to the upper surface, this upper surface is now defined as that surface engaged by the user's upper teeth. Thus the surface 66 referred to by the Examiner is not relevant since it is a lower surface, a surface not engaged by the user's upper teeth.

By virtue of the above action and comments, it is respectfully submitted that claims 3-5 are now in condition for allowance along with all of the other remaining claims. Favorable reconsideration is therefore earnestly solicited.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Julian H. Cohen', is written over a horizontal line.

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